

Message Text

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C O N F I D E N T I A L STATE 004318

EXDIS

E.O. 11652: GDS

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SUBJECT: PROPOSED USG COMMUNICATION TO SAG AFTER SIGNING
OF ARAMCO AGREEMENTS

FOR AMB PORTER FROM ROBINSON

1. EMB IS AWARE OF THE DEPT'S STATEMENT OF U.S. POLICY
WHOSE ISSUANCE WAS AUTHORIZED BY THE SECRETARY ON DEC.
30, 1975 (TEXT IN DEPT OF STATE BULLETIN OF FEB. 2, 1976,
P. 138), WHICH READS:

"THERE HAVE BEEN SIGNIFICANT DEVELOPMENTS DURING THE
PAST YEAR CONCERNING FOREIGN INVESTMENTS BY U.S. PRIVATE
FIRMS. THE SECRETARY, AT THE SEVENTH SPECIAL SESSION OF
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THE U.N. GENERAL ASSEMBLY ON SEPTEMBER 1 AND AT THE CON-
FERENCE ON INTERNATIONAL ECONOMIC COOPERATION ON DECEMBER
16, EMPHASIZED THE U.S. BELIEF THAT FOREIGN PRIVATE
INVESTMENT CAN MAKE A VERY SUBSTANTIAL CONTRIBUTION TO
ECONOMIC DEVELOPMENT. THERE HAVE ALSO BEEN A NUMBER OF
ACTUAL OR CONTEMPLATED NATIONALIZATIONS INVOLVING U.S.
FIRMS, AND ENSUING SETTLEMENT NEGOTIATIONS. IN THESE
CIRCUMSTANCES, THE DEPT WISHES TO REITERATE PERTINENT
U.S. POLICY.

"THE PRESIDENT OF THE UNITED STATES, IN JANUARY 1972, DREW ATTENTION TO THE IMPORTANCE WHICH THE UNITED STATES ATTACHES TO RESPECT FOR THE PROPERTY RIGHTS OF ITS NATIONALS. HE STATED THAT THE POLICY OF THE UNITED STATES CONCERNING EXPROPRIATORY ACTS INCLUDES THE POSITION THAT:

"UNDER INTERNATIONAL LAW, THE UNITED STATES HAS A RIGHT TO EXPECT:

"-THAT ANY TAKING OF AMERICAN PRIVATE PROPERTY WILL BE NONDISCRIMINATORY;

"-THAT IT WILL BE FOR A PUBLIC PURPOSE; AND

"-THAT ITS CITIZENS WILL RECEIVE PROMPT, ADEQUATE, AND EFFECTIVE COMPENSATION FROM THE EXPROPRIATING COUNTRY.

"WITH REGARD TO CURRENT OR FUTURE EXPROPRIATIONS OF PROPERTY OR CONTRACTUAL INTERESTS OF U.S. NATIONALS, OR ARRANGEMENTS FOR 'PARTICIPATION' IN THOSE INTERESTS BY FOREIGN GOVERNMENTS, THE DEPARTMENT OF STATE WISHES TO PLACE ON RECORD ITS VIEW THAT FOREIGN INVESTORS ARE ENTITLED TO THE FAIR MARKET VALUE OF THEIR INTERESTS. ACCEPTANCE BY U.S. NATIONALS OF LESS THAN FAIR MARKET DOES NOT CONSTITUTE ACCEPTANCE OF ANY OTHER STANDARD
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BY THE U.S. GOVERNMENT. AS A CONSEQUENCE, THE U.S. GOVERNMENT RESERVES ITS RIGHTS TO MAINTAIN INTERNATIONAL CLAIMS FOR WHAT IT REGARDS AS ADEQUATE COMPENSATION UNDER INTERNATIONAL LAW FOR THE INTERESTS NATIONALIZED OR TRANSFERRED."

2. THE STATEMENT WAS MOTIVATED BY USG CONCERN AT BURGEONING PRACTICE OF NATIONALIZATION AND 'PARTICIPATION', PARTICULARLY RESPECTING PETROLEUM INTERESTS, WITHOUT PAYMENT OF ADEQUATE COMPENSATION. COMPENSATION GENERALLY HAS BEEN AT NET BOOK VALUE, WHICH OFTEN IS FRACTION OF FAIR MARKET VALUE OR GOING CONCERN VALUE. COMPANIES SOMEWHAT FAIRER DEAL, MORE THAN DOUBLING COMPENSATION PAID, IT IS NOTEWORTHY THAT ARRANGEMENTS CURRENTLY BEING CONCLUDED BETWEEN U.S. STOCKHOLDERS IN ARAMCO AND SAG WOULD REQUIRE THE STOCKHOLDERS TO DEDUCT, IN THIS FINAL SETTLEMENT, THE DIFFERENCE BETWEEN NET BOOK VALUE AND UPDATED BOOK VALUE WHICH SAG PAID FOR THE INITIAL PARTICIPATION IT PURCHASED; THIS LARGE SUM WOULD BE CREDITED AGAINST WHAT SAG WILL PAY FOR

REMAINDER OF THE U.S. STOCKHOLDERS' ASSETS IN ARAMCO. WHEN THE AMOUNT OF EARNINGS WHICH THE COMPANIES -- NOT TO SPEAK OF SAG -- ANNUALLY MAKE FROM ARAMCO'S

OPERATIONS IS COMPARED WITH THE TOTAL OF NET BOOK VALUE TO BE PAID, THE INADEQUACY OF THAT COMPENSATION IS STRIKING.

3. HOWEVER, THE COMPANIES BELIEVE THAT THAT INADEQUACY WILL BE SUBSTANTIALLY CURED BY THE NEW CONTRACTUAL ARRANGEMENTS, PROVIDED THAT SAG OBSERVES THEM UNTIL THE END OF THEIR TERM, I.E., 1999. IN OTHER WORDS, THE FEES THE COMPANIES WOULD EARN BY 1999 WILL BE SO LARGE AS SUBSTANTIALLY TO PLACE THE COMPANIES IN THE POSITION THEY WOULD HAVE BEEN IN HAD SAG MAINTAINED UNTIL 1999 THE ARAMCO CONCESSION AGREEMENT OF 1933 AS AMENDED. CONFIDENTIAL

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4. USG HAS LARGE INTERESTS IN THE PERFORMANCE OF THESE NEW ARRANGEMENTS, INCLUDING (A) THEIR PROVISION OF ADEQUATE COMPENSATION TO AMERICAN COMPANIES IN THE TAKE-OVER OF THE MOST SIGNIFICANT FOREIGN INVESTMENT IN HISTORY AND THEIR CONSEQUENT SUSTENANCE OF THE PRINCIPLE OF INTERNATIONAL LAW WHICH THE U.S. MAINTAINS IN FAVOR OF ADEQUATE COMPENSATION; (B) THE BENEFICIAL EFFECT PERFORMANCE WILL HAVE ON THE U.S. BALANCE OF PAYMENTS; (C) THE PRESERVATION OF A PREDOMINANT AND FAVORED POSITION FOR U.S. COMPANIES IN SAUDI ARABIA, WHICH CAN HAVE IMPORTANT POSITIVE CONSEQUENCES FOR THE SUPPLY OF OIL TO U.S. CONSUMERS AND EQUALLY POSITIVE CONSEQUENCES FOR NOURISHMENT OF CORDIAL SAG-USG RELATIONS.

5. CORRESPONDINGLY, SHOULD THE NEW ARRANGEMENTS BE PREMATURELY TERMINATED, AS SAG HAS TERMINATED PRIOR ARRANGEMENTS WITH ARAMCO BY REQUIRED RENEGOTIATION, THE FOREGOING BENEFITS WILL EVAPORATE PRO TANTO. OUR OBJECTIVE ACCORDINGLY IS TO ENDEAVOR TO GIVE THE NEW ARRANGEMENTS A MEASURE OF UNIQUE STABILITY BY PLACING THE WEIGHT OF THE USG BEHIND MAINTENANCE OF THESE ARRANGEMENTS. WE PROPOSE TO DO THIS THROUGH THE SENDING OF A DIPLOMATIC NOTE TO SAG, AFTER THE SIGNATURE AND FINAL CONCLUSION OF THESE ARRANGEMENTS, ALONG LINES SET OUT BELOW. WE WOULD CONTEMPLATE THAT, IN PRESENTING SUCH A NOTE, YOU WOULD ORALLY EXPLAIN THAT IT IS TRANSMITTED IN THE FRIENDLIEST SPIRIT, IN VIEW OF OUR GENERAL AND DECLARED POLICY OF DEC. 30, 1975, AND IN THE FULLEST CONFIDENCE THAT THE NEW ARRANGEMENTS WILL BE OBSERVED BY THE PARTIES TO THEM TO THEIR MUTUAL BENEFIT.

6. WE WOULD APPRECIATE YOUR VIEWS ON THIS APPROACH AND ITS PROPOSED EXPRESSION AT EARLY JUNCTURE. WE WOULD CONTEMPLATE THEREAFTER PUTTING THE PROPOSAL TO THE U.S. STOCKHOLDERS IN ARAMCO FOR THEIR COMMENT AND CONFIDENTIAL

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ASSENT. PRELIMINARY SOUNDINGS BY US INDICATE THAT THE COMPANIES MAY BE RECEPTIVE.

7. DEPT OF COURSE UNDERSTANDS THERE IS POSSIBILITY THAT SAG MAY BE IRRITATED BY SUCH A COMMUNICATION. IN VIEW OF IMPORTANCE OF INTERESTS AT STAKE, HOWEVER, OUR CURRENT DISPOSITION IS TO SEND A COMMUNICATION OF THIS SUBSTANCE. WE HAVE DRAFTED IT TO MINIMIZE RISK OF ADVERSE SAUDI REACTION, AND ARE CONFIDENT YOU CAN PRESENT IT IN WAY THAT WILL PUT IT IN BEST LIGHT.

8. AN ESSENTIAL PURPOSE OF THE NOTE WOULD BE TO BUILD AN INHIBITION ON SAG'S PART AGAINST FUTURE VIOLATION OR FORCED REVISION OF THE NEW ARRANGEMENTS, BY GIVING SAG THE IMPRESSION THAT SUCH ACTION IS LIKELY TO INVOLVE IT IN DIFFERENCES ON AN INTERGOVERNMENTAL PLANE WITH THE USG. NEVERTHELESS, IF SAG TAKES SUCH ACTION, WE WOULD PRESERVE OUR FREEDOM OF ACTION; IN THIS AS IN EVERY CASE OF A DIPLOMATIC CLAIM ON BEHALF OF A NATIONAL, THE USG WOULD REMAIN FREE TO CHOOSE TO PURSUE OR NOT TO PURSUE THE CLAIM, EVEN IF IT REGARDS THE CLAIM AS WELL FOUNDED.

9. IN THE EVENT THAT THE NEW ARRANGEMENTS ARE VIOLATED AND THE USG DOES CHOOSE TO ASSERT A CLAIM FOR ADEQUATE COMPENSATION TO ITS NATIONALS UNDER INTERNATIONAL LAW, THE VALUE OF THE USG RESERVATION OF RIGHTS -- APART FROM ITS VALUE AS A DETERRENT -- WOULD THEN BE TESTED. IN CERTAIN CONCEIVABLE CIRCUMSTANCES, SUCH AS SITUATION IN WHICH USG WISHED TO MOVE AGAINST SAUDI ASSETS IN U.S., SUCH A RESERVATION MIGHT BE OF GREAT PRACTICAL VALUE, SINCE SAUDI CLAIM FOR U.S. CONSTITUTIONAL AND INTERNATIONAL LAW PROTECTION COULD BE OFFSET BY MEASURE OF CLAIMS MADE UNDER THE RESERVATION. THIS IS OBVIOUSLY NOT A CONSIDERATION WHICH CAN BE MADE EXPLICIT. BUT ON THEIR OWN MOTION SAUDIS MIGHT WELL CONFIDENTIAL

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PERCEIVE THAT THEIR INCREASINGLY INTERDEPENDENT RELATIONSHIP WITH USG CONSTRAINS FREEDOM OF ACTION AGAINST THE COMPANIES' INTERESTS WHICH THEY HAVE EXERCISED LAST 25 YEARS.

10. QUITE ANOTHER WAY IN WHICH THE RESERVATION OF RIGHTS, WHEN REINFORCED WITH THE NOTE CONTEMPLATED, POSSIBLY MIGHT BE OF PRACTICAL VALUE IS IN ITS ESTABLISHMENT OF THE LINK BETWEEN THE COMPANIES' SALE OF ASSETS FOR A FRACTION OF THEIR VALUE AND THEIR NEW CONTRACTUAL RIGHTS. THE "CONSIDERATION," AS LAWYERS

WOULD PUT IT, FOR THE SALE IS THESE NEW RIGHTS. OUR NOTE WOULD MAKE THAT PLAIN IN A FASHION IN WHICH THE COMPANIES HAVE NOT FULLY SUCCEEDED IN DOING IN THE AGREEMENTS. IF, THEN, THE AGREEMENTS ARE VIOLATED, AND IF THE COMPANIES SO CHOSE, THIS LINKAGE MIGHT ENABLE THE COMPANIES TO MAINTAIN THAT THE TERMS OF SALE OF ASSETS ARE VITIATED; THAT THE COMPANIES ARE ACCORDINGLY ENTITLED TO RESTITUTION OF ASSETS (INCLUDING THE EXCLUSIVE CONCESSIONARY RIGHTS TO EXTRACT AND SELL OIL); AND THAT, CONSEQUENTLY, THEY MAY MAINTAIN A CLAIM OF TITLE TO OIL EXTRACTED FROM THE AREA OF THE CONCESSION. SUCH A CLAIM WOULD PERMIT THE COMPANIES TO MAINTAIN "HOT OIL" SUITS IN VARIOUS MARKETS FOR SAUDI OIL ABROAD. WE DO NOT SEE THIS AS A PROBABLE SCENARIO, NOT LEAST BECAUSE OF THE FOREIGN DEPENDENCE ON SAUDI OIL, BUT IT IS NOT AN IMPOSSIBLE ONE. AS STATED ABOVE, PRIMARY OBJECTIVE OF NOTE IS TO REDUCE IN SOME MEASURE POSSIBILITY OF UNILATERAL ABROGATION BY SAUDIS OF NEW AGREEMENT.

11. TEXT OF PROPOSED NOTE READS:

"THE UNITED STATES GOVERNMENT HAS FOLLOWED WITH GREAT CONFIDENTIAL

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INTEREST THE NEGOTIATIONS BETWEEN THE ROYAL GOVERNMENT AND ARAMCO AND ITS UNITED STATES STOCKHOLDERS WHICH HAVE BEEN CONCLUDED WITH THE SIGNATURE OF THE AGREEMENTS OF (BLANK), 197-. IT IS A MATTER OF SATISFACTION TO MY GOVERNMENT THAT AMERICAN COMPANIES WHICH HAVE MADE SO LARGE A CONTRIBUTION TO THE WELLBEING OF SAUDI ARABIA, AND WHICH HAVE BENEFITED SO FULLY FROM THEIR ASSOCIATION WITH SAUDI ARABIA, WILL MAINTAIN AND DEVELOP FURTHER A RELATIONSHIP BENEFICIAL TO THEM AND TO OUR TWO GOVERNMENTS AND PEOPLES.

"WE HAVE HAD AN OPPORTUNITY TO REVIEW THE AGREEMENTS AND, IN DOING SO, HAVE BORNE IN MIND, AMONG OTHER CONSIDERATIONS, THE POLICIES OF THE UNITED STATES SET OUT IN THE STATEMENT OF THE DEPARTMENT OF STATE ISSUED ON DECEMBER 30, 1975, A COPY OF WHICH IS ATTACHED.

"WHILE NOTING THAT THE PAYMENT TO BE PROVIDED TO THE U.S. INTERESTS IN ARAMCO FOR ITS ASSETS IS CALCULATED AT NET BOOK VALUE, WE ALSO NOTE THE CONTRACTUAL PROVISIONS FOR THE CONTINUED SERVICES TO BE RENDERED TO THE ROYAL GOVERNMENT OR ITS DESIGNEE FOR THE YEARS TERMINATING IN 1999, AS WELL AS THE RIGHTS OF THE U.S. PARTICIPANTS IN THE NEW ARRANGEMENTS UNDER THE AGREEMENTS. THE UNITED STATES GOVERNMENT WISHES TO AFFIRM THAT, IN VIEW OF THESE CONTRACTUAL RIGHTS AND OBLIGATIONS OF THE ROYAL GOVERNMENT AND OF U.S. COMPANIES,

AND AS LONG AS THEY REMAIN FULLY EFFECTIVE, THE U.S. GOVERNMENT DOES NOT INTEND TO ASSERT THE RIGHTS UNDER INTERNATIONAL LAW WHICH IT HAS RESERVED IN ITS STATEMENT OF DECEMBER 30, 1975."

12. ALTERNATIVELY, THE LAST CLAUSE OF THE NOTE MIGHT READ: "...FULLY EFFECTIVE, THE U.S. GOVERNMENT WILL CONSIDER THE REQUIREMENTS OF INTERNATIONAL LAW, AS CITED IN ITS STATEMENT OF DECEMBER 30, 1975, TO BE CONFIDENTIAL

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Message Attributes

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